IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 836 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

AND

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MOHMAD FARIQ HAJI MOHMAD

Appearance:

Mr. B.D. Desai, APP for the appellant.

MR MC BHATT for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT and MR.JUSTICE J.R.VORA

Date of decision: 22/02/2000

ORAL JUDGEMENT: (Per: H.R. Shelat, J.)

This appeal is directed against the judgment and order dated 13th July 1992, passed by the then learned Additional City Sessions Judge, Ahmedabad, in Sessions Case No. 77 of 1991 on his file, acquitting the respondent of the offence punishable under Section 302

and 188 of Indian Penal Code as well as Section 135 (1) of the Bombay Police Act. In order to appreciate the rival contentions, necessary facts may in brief be stated.

2. Jagdishbhai Chimanlal Panchal, the complainant runs his Shakti Vijay Auto Works, near Raipur Darwaja in Ahmedabad. Vishnubhai Hargovinddas Panchal was employed as a turner while the respondent was employed for miscellaneous work. Naimuddin alias Mayuddin Yakub aged about 14 years was got employed by the respondent. As per the usual practice there were two keys for locking the factory at the end of the day, of them one key was remaining with Jagdish Chimanlal Panchal and another with the respondent. On 19th July 1990 in the morning when Jagdishbhai Chimanlal Panchal went to his factory and opened the gate he was shocked to see the dead body of Naimuddin alias Mayuddin. He could see several injuries on the person of Naimuddin. He and respondent went to the house of the deceased where the father of the deceased informed them that during the previous night the deceased had not come back from his work. He also informed that the respondent had been to his place till late night and informed him that he would have to find out the deceased any how. The father of the respondent was also contacted. He also informed that at late night he had come back to home, laid down to sleep and in the morning changing the clothes he had left. The complainant Jagdishbhai then could recollect the incident that happened about 25 days prior to the incident. He had seen the respondent in his factory sharpening the Rampuri knife on the emery-machine. On being questioned the respondent replied that he had brought the knife for cutting the vegetables. The respondent was not available. As one of the keys was remaining with the respondent and few days prior to the date of incident the respondent was found sharpening the knife, the complainant could realise that the wrong must have been done by the respondent. He had a reason to believe so because he knew that both the respondents and deceased were often quarrelling as the deceased was not yielding to his bossiness or commands. The respondent was infuriated because his feelings and hopes were frustrated. He believed that he must have upper hand because getting him employed he had obliged the deceased. A complaint against the respondent was then filed with Kagdapith police station. After the investigation was over, a chargesheet for the aforesaid offences against the respondent came to be filed in the Court of the Metropolitan Magistrate, Ahmedabad. The case was then committed to the City Sessions Court. It came to be

registered as Sessions Case No. 77 of 1991. The same was assigned to the then learned Additional City Sessions Judge, Ahmedabad, who framed the charge at Ex.3 against the respondent. The respondent pleaded not guilty. The prosecution, therefore, led necessary evidence. Appreciating the evidence on record, the learned Additional City Sessions Judge reached the conclusion that the prosecution had failed to establish the charge against the respondent beyond reasonable doubt. It was the case solely dependent upon the circumstantial evidence and the circumstances on which the prosecution was relying upon were not indicating guilt & guilt of the respondent without leaving any possibility of innocence of the respondent. He, therefore, passed the order of acquittal. It is against that order of acquittal, the State has filed this appeal calling in question the legality and validity thereof.

3. To different circumstances, Mr. B.D. Desai, the learned APP drawing our attention submits that the learned Judge ought to have held that those circumstances were sufficient to connect the respondent with the offence. The learned Judge has specifically mentioned all those circumstances in Para 18 of the judgment and has thereafter dealt with in seriatim, but for no just reason he held that all those circumstances were not favouring the prosecution. The trial Court ought to have borne in mind the constraits of prosecution to prove the case from head to heel with certainty.

4. The appeal is filed against the order of acquittal and therefore the scope of inquiry would be limited. The Supreme Court, in the case of Bharwad Jakshibhai Nagjibhai and Others V. The State of Gujarat 1996 (1) G.L.H. 226, has held that the law is well-settled. Normally, the appellate court does not disturb the order of acquittal in a case where two views of the evidence are reasonably possible but that principle is not applicable where the approach of the trial Judge in dealing with the evidence is manifestly erroneous and the conclusions drawn are wholly unreasonable and perverse. This Court also, in the case of State of Gujarat V. Mamubha Premsangji Jadeja & Ors - [1999 (3)] 40 (3) G.L.R. 2613, has stated as under regarding the scope of inquiry in acquittal appeal :-

"19. In order to succeed in an acquittal appeal under Sec. 378 of the Cr.P.C., the prosecution has to successfully establish one or the more grounds enumerated hereinbelow :-

(i) That the view taken by the trial Court is not only unjust, unreasonable, but is impermissible in the light of the evidence on record.

(ii) That the impugned acquittal order is trained with vices, which has resulted into miscarriage of justice.

(iii) That the view taken by the Court at the end of the trial could never have been taken by any reasonable man of prudence.

(iv) That the impugned acquittal is totally perverse and palpably wrong and manifestly unjust."

5. In view of such law made clear by this Court, as well as the Apex Court, the prosecution has to show that the view taken by the trial Court is not only unjust, or unreasonable but is also impermissible in the light of the evidence and the order of acquittal is tainted with vices which has resulted into miscarriage of justice. With the assistance of both the learned advocates, we have carefully gone through the entire evidence. Admittedly, there is no eye witness and the case hinges upon the circumstantial evidence. On perusal of the evidence with meticulous care and finicky details, we generally agree with the reasonings of the learned Additional Sessions Judge. When that is so, it is not necessary to restate all those reasonings and the findings he has given. However, we will be dealing with the circumstances on which the learned A.P.P. has emphasized much.

6. When the house of the respondent was searched, clothes and Rampuri knife stained with blood were found. The same were then sent to the Forensic Science Laboratory for analysis. The Laboratory has opined that the blood marks found on the knife as well as the clothes of the respondent were of human blood and the group thereof was `B'. It may be mentioned at this stage that blood group of the deceased was `B'. Mr. Desai has, therefore, vehemently submitted that the discovery of the bloodstained clothes of the respondent and the knife from his (respondent) house was sufficient to connect the respondent with the offence alleged.

7. It may be stated that from the body of the respondent certain quantum of blood was extracted by the

Doctor because of the instruction from the police and the same was sent to the police which was later on transmitted to the Forensic Science Laboratory for analysis. Likewise, from the dead body the blood was extracted and in sealed bottle the same was sent to the Forensic Science Laboratory. It was found that the blood group of both the respondent and deceased was `B'. Mr. Chudasma, the learned advocate, representing the respondent has, therefore, contended that possibility of mischief or dishonesty on the part of the police cannot be ruled out because after receiving the bottles of the blood the clothes & knife might have been sprinkled with the said blood so as to rope in the respondent.

8. Ordinarily, such circumstance would be the strongest circumstance on record supporting the case of the prosecution and on that base conviction can be based, but, in this case, we do not think it safe to rely upon that circumstance and hold the respondent guilty.

9. The prosecution has to prove the charge beyond reasonable doubt. If the prosecution relies on blood marks on muddamal & also get the blood extracted, it is incumbent upon the prosecution to show to the Court what quantity of blood was extracted from the dead body and from the accused's body and whether the same quantity was sent to the laboratory for analysis. If before sending the same, some amount thereof was used, it must be shown for what purpose the same was used; or why the blood less in quantity then collected was sent to laboratory. The Laboratory has in its report mentioned that it received 3 ML. blood of deceased and 70 ML. blood of respondent, but prosecution has shrewdly not led the evidence to show what was the quantum of blood extracted from both the bodies in order to show that the same quantum reached the F.S.L. and not less. When on that point, the evidence is not led, Mr. Chudasma is, in our opinion, right in contending that the possibility of any mischief having been played by the police agency cannot be ruled out and this possibility points to the innocence of respondent casting clouds of suspicion on the credibility of entire wrap and woof of prosecution's story.

10. Even if this aspect is ignored for a while, the prosecution cannot succeed. The Apex Court, in the case of Prabhoo V. State of Uttar Pradesh - AIR 1963 S.C. 1113 has held that if the weapon alleged to have been used by the accused and the clothes of the accused are found stained with blood, the prosecution has to lead evidence to establish that the weapon found belongs to

the accused or was holding the same and the bloodstained clothes were his. On this line, no evidence is led. Mr. Desai, the learned APP, at this stage, draws our attention to the evidence of Ahmedhusein Yakubbhai (Ex.18) and submits that he had made a statement before the police that he saw the respondent on the next day morning and at that time he had an occasion to see the blood marks on the clothes put on by the respondent. It is pertinent to note that Ahmedhusein, brother of the deceased does not support such case of the prosecution and even if the contradiction on this point is brought to the notice of the police officer so as to show that a particular statement was made by the witness, the said evidence alone should not be accepted, when the source is not supporting the same. On such evidence, therefore, it would not be just and proper to hold that the clothes found were the clothes of the respondent. In view of the facts on record, the discovery of the clothes and knife from the respondent's father's house, with blood marks, cannot be a circumstance clearly supporting the case of the prosecution leaving no other possibility favouring the accused.

11. Mr. Desai, at this stage, contends that the respondent was absconding and could be nabbed only on 23rd July 1990. As he was not found for 4 days is the circumstance favouring the prosecution. The contention cannot be accepted. Even the innocent person thinking that he would be roped in unnecessarily may also keep himself away from the police for some days. When that possibility is there, the circumstance, on which the prosecution relies, cannot be made the base for holding the respondent guilty.

12. It is also the contention advanced on behalf of the respondent that in this case discovery of the clothes and the knife from the house of the respondent's father cannot be said to be a legal evidence because the accused had not made any statement to point out those articles, and so the search and seizure made will not fall within the ambits of Section 27 of the Indian Evidence Act. What is sought to be conveyed by the learned advocate is that whenever search and seizure are made by the police agency, of its own accord and not on the accused's making the statement to point out those articles, the search and seizure made would not be in consonance with law and the evidence in that regard must be kept out of consideration. In our view, this contention is nothing but the misconception of law. Even if the accused does not make any statement to point out the weapon and other articles which would incriminate him in the offence and

the Police Officer on his own accord thinks it fit to make a search or from the materials before him he prefers to make a search of a particular place and after searching that place finds out the weapon or article secreted therein, the same being permissible in law, the evidence in that regard can be taken into account and it cannot be discarded as contended. In this case, therefore, the evidence regarding the finding of the clothes and the knife cannot be discarded on such contention, but we do not place any reliance thereon, for the reasons we have hereinabove stated.

13. On no other ground, further submissions are made. For the aforesaid reasons, the prosecution has failed to convince us that the learned Additional Sessions Judge has fallen into error in acquitting the respondent disregarding weight, vehemence and persuasiveness of the circumstances pointed out indicating guilt only. The appeal is, therefore, liable to be dismissed and the same is accordingly dismissed, maintaining the order of acquittal.

.....

(rmr).